PALDRAMAN PALANIAPPAN & ORS.

v.

LACHEMI SANGANAYAR

HIGH COURT MALAYA, SHAH ALAM
MAHADEV SHANKAR J
[CIVIL SUIT NO. 22 - 356 OF 1990]
24 JULY 1992

CIVIL PROCEDURE: *Specific performance of an agreement for sale of land - Or alternatively for rescission and consequential relief - Summary judgment under O. 81 of Rules of the High Court - Failure to transfer land as agreed - Bare allegation of fraud and forgery.*

The defendant was the registered proprietor of a piece of land (the said lot). She agreed to sell the said land to the plaintiffs for RM40,000 only. This money was accounted for as follows: RM19,000 paid to bank towards redeeming of a piece of land belonging to the defendant's husband (deceased). Another RM12,000 to be set off against a loan taken from one Pavayee. The balance of RM9,000 to be paid to the bank to settle the debts of the deceased.

The defendant does not deny executing the necessary documents but claimed that she was illiterate and thumb printed blank forms and the thumb print was procured by fraud. However the Court found the bare allegation of fraud inherently incredible and totally unworthy of belief.

Held:

[1] In all the circumstances of this case and in the light of the letter the defendant's allegation that she was defrauded into executing the statutory declaration and the application for transfer is inherently incredible and totally unworthy of belief.

[2] It is common place that allegation of fraud must be pleaded with great particularity. It is not enough to make sweeping allegations, which practically amount to bare denial which this Court will not countenance. Such a defence is no defence at all.

[Plaintiff's application for summary judgment allowed. Damages are to be assessed.]

Legislation referred to:
Rules of the High Court 1980, O. 81

For the plaintiff - Ravi; M/s. Seah Balan Ravi & Co.
For the defendant - Muthu; M/s. Muthu & Co.

JUDGMENT

Mahadev Shankar J:

This is a claim for specific performance of an agreement for the sale of land, or alternatively for rescission and consequential relief. The plaintiffs applied for summary judgment under O. 81 of the Rules of the High Court. After hearing arguments in open Court I gave judgment in terms to the plaintiffs. My reasons now follow.

The parties all reside in Sungei Burung Sekinchan Selangor and would appear to be neighbours. They are all concerned one way or other with paddy planting. As can be seen from the defendant's affidavit she is well aware of the close family relationship of the plaintiffs. The first plaintiff Paldraman is the husband of the second plaintiff Karupayee who has a sister Pavayee. The third plaintiff is Paldraman's nephew.

The defendant now aged 60 is the widow of one Ambunayar a/l Kanayar (deceased). It would appear that she had a son called Narainan a/l Ambunayar and another son called Krishnan a/l Ambunayar by the deceased.

The defendant was the registered proprietor of a piece of paddy land held under title H.S. (M) 3216 for Lot 10685 in the Mukim of Tg. Karang (the said Lot). She pledged this Lot to Pavayee on 24 December 1984 in return for a loan of RM12,000. As long as the loan remained unpaid Pavayee was entitled to remain in possession and harvest the paddy. The terms of the agreement are spelt out in a detailed formal written document all in Bahasa Malaysia. It was executed by the parties by the affixing of their thumbprints in the presence of Paldraman and the defendant's son. I make this point to underline the fact that the defendant, who places a great deal of emphasis on her illiteracy, was not unfamiliar with business documents and their purposes. She had previously pledged this Lot to a Chinese.

The deceased was the owner of another parcel of land held under EMR 5060 for Lots 5475 and Lot 10673 (the said parcel). He had charged this to the United Asian Bank (the bank). The plaintiffs contend that in consideration for the payment of the moneys due to the bank the defendant agreed to sell the said Lot for RM40,000.

In support of this claim they have produced a statutory declaration dated 29 July 1988 sworn by the defendant before a Tamil Commissioner for Oaths in Kuala Selangor. In this document the defendant swears she has sold the said Lot for RM40,000. This money was accounted for as follows. RM14,000 plus RM5,000 as paid to the bank, RM12,000 to be set off against the loan taken from Pavayee. The balance of RM9,000 to be paid to the bank to settle the debts of the deceased.

The plaintiffs have also produced a letter from the bank dated 22 June 1988 to confirm that they have received RM14,000 from Paldraman at the instance of the defendant's son Krishnan and another similar letter from the bank dated 28 July 1988, for the payment of RM5,000. These payments are not disputed by the defendant. Although they were paid on account of the deceased's debts the fact is that the defendant's widow is a beneficiary and the payments are referred to in the statutory declaration and lumped together with her debt to Pavayee and a further payment of RM9,000 to be made to the bank. There is another similar letter to the effect that this was paid on 24 December 1988.

Together with the statutory declaration is a written application for approval to transfer the said Lot which was a restricted title. All material particulars relating to the transfer is contained in the application with the names of the second defendant and the third defendant as transferees. The defendant states the purpose of the transfer as being to provide funds for her old age and to assist her son Krishnan to meet the expenses required to maintain her. This document also carries her thumbprint and is witnessed by the Magistrate of Kuala Selangor.

The defendant does not deny that she executed these documents. But she says that she is illiterate and claims the forms were blank when she thumbprinted them. She says that her thumbprint was procured thereon by the fraud of the plaintiffs. She says that as soon as she discovered the fraud she stopped the Pentadbir Tanah Daerah from proceeding with the transfer.

The only evidence of her reaction to this alleged fraud is contained in a letter dated 19 July 1989 addressed to the Pentadbir Tanah Daerah Kuala Selangor. Forging and fraud are serious matters. The letter is written by well-known solicitors. But all they say is that by a mistake

an application has been submitted for the transfer of this said Lot to the second and third plaintiffs whilst the title deed is being retained by Paldraman. So they request that no action be taken and the application be cancelled.

In all the circumstances of this case and in the light of this letter I consider the defendant's bare allegation that she was defrauded into executing the statutory declaration and the application for transfer inherently incredible and totally unworthy of belief. There was no police report and there was absolutely no action taken to establish the alleged forging even though the defendant was then being legally advised. It was also pointless for the plaintiffs to pay RM29,000 to the bank in a matter in which they had no interest except to acquire ownership of the said Lot which by then was already in the legal possession of the second plaintiff's sister.

The defendant was able to divide them however. Although she had already set off this debt as aforesaid on 16 March 1990 the defendant paid Pavayee RM12,000 and got her to "relinquish" all her rights under the loan agreement dated 24 December 1984. Pavayee signed a document to this effect.

In my view this deft bit of manoeuvering cannot and should not be allowed to assist the defendant in wriggling out of her obligations to the plaintiffs. She had a contract with them and she must be made to perform it.

The plaintiffs have always been able and willing to pay the balance of the RM12,000 to make up the RM40,000 required to complete the consideration.

The defendant on the other hand is unrepentant. She is not willing to acknowledge the benefit of the RM29,000 which she acknowledged as good partial consideration for the said Lot. There is something else.

It is commonplace that allegation of fraud must be pleaded with great particularity. It is not enough to make sweeping allegations, which practically amount to bare denials which this Court will not countenance. Such a defence is no defence at all.

After I gave summary judgment the defendant applied for leave and a stay of execution. New points of fact and law are raised in support of the application which were not raised in the pleadings on the submissions before me. It seems that the document of title was at all times in the possession of the defendant contrary to the letter of her solicitors dated 19 July 1989 and is still in her possession.

Leave to appeal where the subject matter is below RM100,000 is not automatic. It is discretionary and there must be special circumstances. The only reason I granted leave in this case was that the matter was decided on affidavit evidence and submissions. But it is a measure of this Court's assessment of the defendant's *bona fides* that I ordered both the title deed and a sum of RM29,000 to be deposited in this Court. If the authorities do not approve the transfer, the plaintiffs must have their money back. Damages are a matter to be assessed because the plaintiffs have been out of possession since 16 March 1990. Alternatively they must be compensated in interest if this appeal fails. If the terms on which leave and a stay is granted is not complied with by the time limit presented, the same must be deemed withdrawn.

Also found at [1992] 4 CLJ 1870